

REMARKS

To further prosecution of the present application, Applicant has amended herein Claims 2, 14, 17, 29, 42, 44, and 49, and has cancelled herein Claim 20. The claim amendments do not add subject matter and have antecedent basis. Applicant has also added herein new Claims 79-80 to the present application. Claims 2, 10-13, 14, 17, 26-27, 29, 37-38, 40-44, 49, and 79-80 are currently pending in the application with Claims 2, 14, 29, 42, 49, and 79 in independent form. Applicant respectfully requests reconsideration.

Rejection of Claims 2, 10-11, 13-14, 17, 20, 26-27, 29, 37-38, 40-44, 49, 65-78 Under 35 U.S.C. § 103

Claims 2, 10-11, 14, 17, 20, 26-27, 29, 37-38, 40-44, 49, 72-73, and 78 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,845,256 issued to Pescitelli et al. ("Pescitelli") in view of U.S. Patent No. 6,584,446 issued to Buchanan et al. ("Buchanan") and in further view of "Manhattan Life Insurance Co.", Financial Services Week Abstract, August 24, 1992 ("Manhattan"). Applicant has cancelled herein Claims 65-78 without prejudice to the subject matter contained therein. Applicant respectfully reserves the right to pursue aspects of the inventions recited in Claims 65-78 in one or more continuation applications.

Applicant respectfully traverses the rejection of the above-noted Claims under 35 U.S.C. § 103(a) in view of the cited combination of prior art references for the reasons given below.

With respect to independent Claim 2, the Examiner indicates in the Office Action that Pescitelli in view of Buchanan teaches the limitations recited in Claim 2 with the exception Pescitelli in view of Buchanan do not teach the following features:

determining a death benefit amount based upon a probability of the simultaneous or coincident death of the persons, and a probability of the coincident death of one person and permanent incapacity of the another person within a benefit qualification time frame, the death benefit amount having a fixed value and being determined independent of other risk exposures of either or both persons and independent of one or more other insurance benefits either or both persons are eligible for;

the confirmation of at least one of: (i) the occurrence of simultaneous or coincident death of the persons at substantially the same time or within the benefit qualification time frame, and (ii) the occurrence of death of one of the persons and the permanent incapacity of another of the persons within the benefit qualification time frame, payment of the death benefit amount being independent of one or more other benefit payments either or both persons are eligible for; and

the policy being a stand-alone policy independent in effect from other insurance benefits either or both persons are eligible for.

The Examiner contends that Manhattan teaches these limitations. The Examiner therefore concludes that, at the time of the invention, it would have been obvious to one having ordinary skill in the art to have modified the combined teachings of Pescitelli in view of Buchanan with the teachings of Manhattan with the motivation of having a means to provide a potential beneficiary with an insurance benefit if the beneficiary had lost two people who had insured the beneficiary.

Applicant respectfully submits the method recited in Claim 2 of providing a beneficiary with a benefit amount in the event of the simultaneous or coincident death of two persons is different from the methods disclosed in the cited combination of prior art references. In addition, Applicant respectfully submits that Manhattan does not provide any teaching or suggestion that would have motivated one of ordinary skill in the art to modify Pescitelli in view of Buchanan to achieve the claimed invention. Manhattan is directed to a first-to-die policy providing an additional benefit in the event of the simultaneous death of two jointly-insured persons; however, Manhattan does not provide the motivation to combine its teachings with those of Pescitelli in view of Buchanan. Further, assuming *arguendo* the suggested combination of prior art references is obvious to one having ordinary skill, the combination does not achieve the invention recited in Claim 2.

As provided by the foregoing amendments, Claim 2 has been amended and is directed to:

A method for providing a simultaneous or coincident multiple death insurance policy for one person and another person, the method comprising:

identifying the persons as insured parties under the insurance policy, the insurance policy being a stand-alone policy independent in effect from other insurance benefits either or both persons are eligible for;

obtaining information regarding the persons;

entering information regarding the persons into a data processing apparatus and determining in the data processing apparatus the eligibility of each of the persons by comparing information received regarding each of the persons with one or more standards stored in the data processing apparatus;

entering information related to a death benefit amount into the data processing apparatus and determining the death benefit amount based upon a probability of the simultaneous or coincident death of the persons within a benefit qualification time frame, the death benefit amount having a fixed value and being determined independent of other risk exposures of either or both persons and independent of one or more other insurance benefits either or both persons are eligible for;

entering information related to at least one beneficiary of the insurance policy into the data processing apparatus;

entering information related to a the benefit qualification time frame into the data processing apparatus, the benefit qualification time frame being a term of the insurance policy; and

generating the insurance policy using the data processing apparatus from the information relating to the eligible persons, the death benefit amount, the at least one beneficiary, and the benefit qualification time frame, the insurance policy creating an obligation of an insurer to pay the death benefit amount only upon the confirmation of the occurrence of simultaneous or coincident death of the persons at substantially the same time or within the benefit qualification time frame, the payment of the death benefit amount being independent of one or more other benefit payments either or both persons are eligible for. (emphasis added).

Applicant respectfully submits the cited combination of prior art references, and, in particular, Manhattan, does not teach or suggest at least the limitations of Claim 2 directed to:

entering information related to a death benefit amount into the data processing apparatus and determining the death benefit amount based upon a probability of the simultaneous or coincident death of the persons within a benefit qualification time

frame, the death benefit amount having a fixed value and being determined independent of other risk exposures of either or both persons and independent of one or more other insurance benefits either or both persons are eligible for;
generating the insurance policy . . . the insurance policy creating an obligation of an insurer to pay the death benefit amount only upon the confirmation of the occurrence of simultaneous or coincident death of the persons at substantially the same time or within the benefit qualification time frame, the payment of the death benefit amount being independent of one or more other benefit payments either of both persons are eligible for; and
the insurance policy being a stand-alone policy independent in effect from other insurance benefits either or both persons are eligible for.

The Examiner contends that Manhattan provides the motivation to modify Pescitelli in view of Buchanan to achieve the claimed invention because Manhattan teaches or suggest those limitations of Claim 2 that are not disclosed by Pescitelli alone or in combination with Buchanan. Applicant respectfully disagrees.

Manhattan discloses a first-to-die whole life insurance policy that would pay a benefit amount to a beneficiary upon the death of the first of two jointly-insured persons. Manhattan further discloses that such a first-to-die whole life policy can include a second death benefit amount or a simultaneous death benefit amount that is available if the deaths of the two persons occur simultaneously or if the second death takes place within 90 days of the first death. The Manhattan insurance policy essentially provides for two death benefit payments and obligates the underwriting insurance carrier to pay the first benefit payment when the first of the two persons dies and to pay the additional second benefit payment if the two persons die simultaneously or if the second person dies within 90 days of the death of the first person. The Manhattan policy is a first-to-die or survivor insurance policy that provides benefits typically to the surviving person of the two jointly-insured persons and is underwritten with the expectation that the insurance carrier will certainly pay at least the first benefit amount. As a result of assuming this “risk”, the insurance carrier would typically charge the insured persons a relatively high premium because the insurance carrier expects to pay at least the first benefit amount. As

an additional benefit of this first-to-die or survivor policy, a second benefit amount is available if the deaths of the two persons occur simultaneously or if the second death takes place within 90 days of the first death. Further, Manhattan provides that the insured persons may exchange the policy for a separate individual policy for each person. Manhattan also provides that the surviving insured person may convert the policy into a permanent insurance plan after the first death. Thus, other than the additional second or simultaneous death benefit provided under the Manhattan policy, this first-to-die policy is directed to provide the two insured persons or the surviving person with options for other life insurance policies.

The Manhattan policy creates an obligation of an insurance carrier to pay two distinct benefit amounts with the payment of the first benefit amount upon the death of the first person and the payment of the second or additional benefit amount upon the simultaneous death of the second person under the conditions described above. In contrast, the method of Claim 2 provides a policy that obligates an insurance carrier *to pay the death benefit amount only upon confirmation of the occurrence of simultaneous or coincident death of the persons at substantially the same time or within the benefit qualification time frame*. More specifically, the first-to-die Manhattan policy creates a non-conditional benefit payment obligation of an insurance carrier to pay the first benefit regardless of whether the insurance carrier is required to pay the second or simultaneous death benefit, while the simultaneous or coincident multiple death insurance policy of the method of Claim 2 creates a conditional benefit payment obligation of an insurance carrier to pay a benefit amount only in the event of simultaneous death of the two persons as defined in Claim 2. For example, the Manhattan policy would require an insurance carrier to pay the first benefit amount upon the death of the first person regardless of whether the death of the second person occurs, and to pay the second benefit amount upon the simultaneous death of the two persons or if the second death occurs within 90 days of the first death. No second or simultaneous benefit payment obligation is created under the Manhattan policy if, for instance, the second death occurred six months from the first death or the simultaneous death. Such two-fold benefit payment obligations of the Manhattan policy are different from the sole benefit payment obligation of the policy of Claim 2 whereby the benefit amount is paid

only if the death of the persons occurs simultaneously at the same time or within the benefit qualification time frame which can be, for instance, a 3-week, 3-month, or 3-year time frame. Thus, Applicant respectfully submits the sole benefit payment obligation of the insurance policy of the method of Claim 2 is different from the two-fold benefit payment obligations of the first-to-die Manhattan policy. Manhattan does not disclose, teach, or suggest that the second or simultaneous benefit payment may be realized separate from, or as a separate policy from, the first-to-die insurance policy. Characterizing the simultaneous benefit payment as a second benefit, Manhattan teaches or suggests this additional benefit obligation is not assumed by the insurance carrier other than through the first-to-die policy.

In addition, the method of Claim 2 provides a simultaneous or coincident multiple death insurance policy for the single risk of simultaneous or coincident death of the persons at substantially the same time or within the benefit qualification time frame, while the Manhattan policy covers two distinct risks - a first risk of the death of the first person and the survival of the second person, and a second risk of the death of the second person simultaneously with or within 90 days of the death of the first person. The insurance policy of the method of Claim 2 also requires that ***determining the death benefit amount is based upon the probability of the simultaneous or coincident death of the persons within the benefit qualification time frame***, whereas the Manhattan policy determines the first death benefit not based upon the probability the first death will occur, but, rather, based on the certainty the first death will occur and determines the second death benefit based on the probability the second death occurs simultaneously or within 90 days of the first death. As mentioned, the Manhattan policy covers the expected event of the death of the first of two persons, and therefore would command a relatively high insurance premium, and covers the additional risk the death of the second person will occur simultaneously or within 90 days of the death of the first person. The expected event of the first death and the additional risk of the simultaneous second death the Manhattan policy covers are different risks than the single risk of simultaneous or coincident death of two persons covered by the insurance policy of the method of Claim 2. The single risk of the insurance policy of Claim 2 is a highly improbable or unlikely risk or event, in comparison to the risks the Manhattan policy covers, such that, the policy

of Claim 2 would command an insurance premium that is very low and a mere fraction of the insurance premium the first-to-die Manhattan policy would command. Thus, Applicant respectfully submits the simultaneous or coincident death insurance policy of the method of Claim 2 covers a single, highly unlikely risk that is quite different from the two risks covered by the Manhattan policy in terms of probability and the insurance premium such risks would command.

Furthermore, Manhattan does not disclose that the second or simultaneous death benefit amount of the first-to-die policy is determined *independent of other risk exposures of either or both persons and independent of one or more other insurance benefits either or both persons are eligible for*, as is required for the simultaneous or coincident death benefit amount of Claim 2. Rather, the second or simultaneous death benefit amount Manhattan discloses is linked to or provided under a first-to-die policy that provides for the primary risk of one of two jointly-insured persons surviving. In other words, the simultaneous death benefit of the Manhattan policy is not provided irrespective of other risk exposures of either persons; rather, the simultaneous death benefit is provided via a policy that covers the risk to either persons of the death of one insured and the survival of the other insured. Manhattan also does not disclose that *the payment of the death benefit amount is independent of one or more other benefit payments either or both persons are eligible for*. Rather, Manhattan discloses that a “second” benefit becomes available if deaths occur simultaneously or if the second death takes place within 90 days of the first death, which indicates the simultaneous death benefit is “second” and additional to the first-to-die benefit, indicating that the payment of the simultaneous death benefit under the Manhattan policy is not independent of the first-to-die benefit that each of the two jointly-insured persons is eligible for.

Finally, the Manhattan policy is not *a stand-alone policy* that provides a death benefit amount in the event of simultaneous or coincident death of the persons that is *independent in effect from other insurance benefits either or both persons are eligible for*, as required by Claim 2. Rather, the Manhattan policy is a first-to-die or survivor policy for a separate and different risk than simultaneous death that provides a second or simultaneous death benefit that is not independent in effect from the primary first-to-die benefit that either or both of the jointly-insured persons are eligible for.

Thus, Applicant respectfully submits that Manhattan does not teach or suggest those limitations of Claim 2 discussed above such that one of ordinary skill in the art would have been motivated at the time of the invention to modify the teachings of Pescitelli in view of Buchanan to provide a death benefit amount to a beneficiary in the event of the simultaneous or coincident death of two persons at substantially the same time or within the benefit qualification time frame, as required by Claim 2.

In addition, assuming *arguendo* one of ordinary skill in the art would have been motivated to combine the teachings of Manhattan with the teachings of Pescitelli in view of Buchanan, such a combination would not achieve the invention of Claim 2 for the reasons given above. The modifications of the teachings of Pescitelli in view of Buchanan that would be required to achieve the invention of Claim 2 are clearly not taught or suggested by Manhattan. Also, Pescitelli in view of Buchanan are clearly directed to different insurance policies than the insurance policy of the method of Claim 2. In particular, Buchanan discloses an insurance policy to cover both long term care payments and a last-to-die death benefit whose amount is dependent upon the amount that was previously paid to the insureds for previous long term care claims. Applying the teachings of Manhattan to modify Buchanan would not achieve the invention of Claim 2 because the benefit amounts of the policy of Manhattan or Buchanan are not determined *based upon a probability of the simultaneous or coincident death of the persons within a benefit qualification time frame nor determined independent of other risk exposures of either or both persons and independent of one or more other insurance benefits either or both persons are eligible for*. In addition, payment of the benefit amount provided by the policy of Manhattan or Buchanan is not made *independent of one or more other benefit payments either of both persons are eligible for*, as required by Claim 2.

Thus, Applicant respectfully submits the simultaneous or coincident multiple death insurance policy of the method of Claim 2 is not obvious and patentably distinct from the cited combination of prior art references for at least the foregoing reasons. Applicant therefore respectfully requests withdrawal of the rejection of Claim 2 under 35 U.S.C. § 103(a).

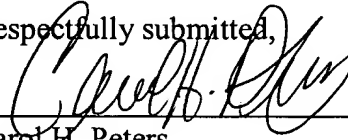
With respect to amended independent Claims 14, 29, 42, and 49, Applicant respectfully submits the discussion provided above with respect to Claim 2 applies equally to the limitations of these independent Claims and respectfully submits that Claims 14, 29, 42, and 49 are patentably distinct from the cited combination of prior art references for at least these same reasons. Accordingly, Applicant respectfully requests the rejection of Claims 14, 29, 42, and 49 under 35 U.S.C. § 103(a) be withdrawn.

Patentability of New Claims 79-80

Applicant respectfully submits that new Claims 79-80 are not obvious and patentably distinct from the prior art of record for at least the reasons given above with respect to the currently pending independent Claims. New independent Claim 79 is similar to Claim 42 with the additional limitation a portion of said benefit amount is paid upon the confirmation of the first death of the one person and a remainder of said benefit amount is paid upon the confirmation of the second death of the another person. None of the cited prior art references, alone or in the suggested combination, teaches or suggests payment of the benefit amount in two portions whereby a portion is paid upon confirmation of the first death and a remainder is paid upon confirmation of the second death. Claim 80 depends from Claim 79 and is not obvious and patentably distinct over the prior art of record for the reasons given above.

Based upon the foregoing amendments and discussion, the present application is believed to be in condition for allowance, and a notice to this effect is respectfully requested. Should the Examiner have any questions concerning this response, he is invited to telephone the undersigned.

Respectfully submitted,



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